USPTO asserts that the methods of Groups I, II, III, V, VI and VII are "unrelated" and require different "endpoints." The Groups IV, VII and IX are considered different products by the USPTO. The reasons for the restriction are based on the assertion that "cells, adjuvant, and expansion media are distinct because their structures are different..." The USPTO then stated that such Groups require "different searches." Based on this explanation, the USPTO requires separation into nine different groups. Applicants disagree.

Election of Invention

Applicants elect, with traverse, claims 1-5, of Group I.

Reasons for Traversal

At the outset, it is very interesting to note that the USPTO has drawn the lines of restriction for the claims along the similar lines as the number of independent claims. Each independent claim is a separate Group, and the USPTO has considered the same claim to be drawn to as many as three separate and distinct inventions! While applicants acknowledge that this alone is not sufficient to support a traversal of the restriction requirement, it will be shown below that there exists no other reason for restricting the claims into nine separate Groups.

The USPTO has stated in its paragraph 5, that Groups I, II, III, V, VI, and VII involve methods that: "require different ingredients, process steps and endpoints to accomplish the use of enhancing an immune response, treating an infectious disease, treating cancer, preparing particular cell populations...." Applicants disagree with this line of reasoning as it contains many factually erroreous statements. First, the applicants respectfully remind the USPTO that what applicants consider to be their invention is the subject matter of the claims. Therefore, it is incorrect for the USPTO to state that the methods of Groups I, II and III "require different ingredients and process steps." Indeed, the "required ingredient" of claims 1-5 is the same - flt3-ligand. The fact that the patient is suffering from cancer or an infectious disease does not make it a distinct and separately patentable invention. Furthermore, the statement that the "endpoints" are different is not only completely without objective evidentiary support, it has nothing at all to do with patent law. Whether or not the endpoint of a physiological condition is achieved is irrelevant to the claims at issue. Notwithstanding the above, the USPTO has not defined what it means by "endpoint" and has failed to show how such endpoints for each of the sixteen claims are indeed different. Applicants believe and respectfully submit that all originally filed claims define one invention, and that if distinctions are to be drawn, that claims 1-7, 12, 16 and 18 define one invention, clams 8-11, 13-14 and 19 define one invention, and the remaining claims, 15 and 17 define a single invention.